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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Norman Zwicky, for himself and on behalf of all others similarly situated,

Plaintiff,

v.

Diamond Resorts International, Inc., *et al.*

Defendants.

No. 2:20-CV-02322-PHX-DJH

JOINT CASE MANAGEMENT PLAN

(ASSIGNED TO THE HONORABLE DIANE J. HUMETEWA)

Plaintiff, Norman Zwicky ("**Plaintiff**" or "**Zwicky**"), and Defendants, Diamond Resorts International, Inc. ("**DRI**"), ILX Acquisitions, Inc. ("**ILX**"), Diamond Resorts Management, Inc., ("**DRM**"), Troy Magdos, Kathy Wheeler, and David F. Palmer

(collectively, "**Defendants**"),[1] by and through their respective counsel, hereby submit this Joint Case Management Plan ("**Case Plan**"), pursuant to Rules 16 and 26(f)(3), Federal Rules of Civil Procedure.

I. NATURE OF THE CASE / FACTUAL AND LEGAL BASIS OF CLAIMS AND DEFENSES

The parties have considered the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case pursuant to Rule 26(f)(2).

A. Plaintiff's Position

Plaintiff Zwicky's position regarding the nature and basis of his claims is as follows:

1. Factual Basis for Plaintiff's Claims

Plaintiff is Norman Zwicky, a retired postal worker. He formerly owned a traditional timeshare interest—i.e. a time-specific, fractional, deeded interest in real property—at Kohl's Ranch in Payson, Arizona. In August 2010, Defendant Diamond Resorts International, Inc. ("**DRI**"), through a wholly-owned subsidiary, Defendant ILX Acquisition, Inc. ("**ILX**"), purchased Kohl's Ranch and made it part of its Premier Vacation Collection (the "**Collection**"). DRI then induced Zwicky to relinquish his timeshare interest at Kohl's Ranch and purchase a 13,000 Points on a DRI "Points Certificate" for approximately $26,400, including the stipulated trade-in value of his Kohl's timeshare.

In doing so, Zwicky became one of approximately 25,000 current and former members of the proposed class who bought Point Certificates within DRI's Premiere Vacation Collection. The Points that comprise each member's Points Certificate serve as the basis for calculating his or her ownership interest in the Premiere Vacation Collection, his voting rights in the Premiere Vacation Collection Owners Association, Inc. ("**PVCOA**" or "**the Association**"), the amount of his or her assessment obligations paid annually to the

[1] As of the date of filing this Case Plan, Defendants Stephen J. Cloobeck and Al Bentley, have not yet been served. As such, this Case Plan is not being filed on their behalf.

Association, and his or her booking rights for vacation accommodations at any timeshare resort within DRI's Collection. In the latter respect, Zwicky's "points" represent the internal currency of the DRI timeshare regime.

PVCOA, in turn, has substantial ownership interests in numerous individual resorts comprising the Collection (sometimes referred to as "**Component Sites**" in the corporate documents)—typically a sufficient interest to exercise dominant control of the Board of Directors of each Component Site's separate homeowner's association (HOA).

In addition, Zwicky is a mandatory member of "THE Club," managed by DRI, which collects a separate annual fee for, inter alia, timeshare exchanges outside the DRI network.

Zwicky, and all other members of the Association, contractually agree to a lifetime obligation to pay for annual Member Obligations, including annual assessments levied by the Board of Directors of the Association. DRI (or a subsidiary) dominates and controls the PVCOA Board by virtue of the sheer numerosity of its own "points" held through its "Bulk Membership" in PVCOA, as well as the organic documents of the Association purporting to confer preferential voting rights on the Developer (weighted nine times that of private, individual owners).

In exercising its dominant control, DRI stacked the PVCOA Board of Directors with its own executive-level employees. Those executives include Defendants Troy Magdos (Director and President of PVCOA and DRI's Senior Vice President, Resort Specialist), Kathy Wheeler (Secretary/Treasurer of PVCOA and DRI's Vice President, Homeowners Division), and the now-dismissed Linda Riddle (Director and Vice President of PVCOA and DRI's Vice President, Association Administration) (collectively, the "**Board Defendants**"). The Association's conflicted directors (DRI employees) in turn selected DRI's wholly-owned subsidiary, Defendant Diamond Resorts Management, Inc. ("**DRMI**"), to serve as property management company, and delegated certain key management duties (such that

DRMI became a "**Managing Entity**" of the Collection with fiduciary duties owed directly to members by statute).

The Board Defendants, and DRM, had the responsibility of determining and levying assessments on Association members, by establishing each member's pro rata share of Common Expenses (a defined term that does not include DRI's internal corporate overhead), which is based on the individual member's "points" ownership.

Prior to DRI's acquisition of the Collection, Zwicky paid $800–850 per year in assessment fees for his "Platinum Membership" timeshare at Kohl's Ranch. By 2013, however, DRI was charging him annual assessment fees roughly triple that figure. Furthermore, before Zwicky bought into DRI's Points regime, his cost of an annual ten-day vacation at Kohl's Ranch was about $200.00 per night. Afterwards, he found that—by amortizing his initial investment over a period of seven years and adding in DRI's fee increases—he paid over $600.00 per night for the same booking rights. This amount far exceeded the rates DRI charged the public to rent out its own units (developer-owned inventory) at resorts within its Collection during the same periods, and far exceeded any rational fair market value of the resort accommodations. As a consequence of the assessment of exorbitant amounts of annual fees, DRI rendered Zwicky's Points Certificate effectively worthless.

Therefore, in 2015, Zwicky initiated an inspection action in the Arizona Superior Court to investigate the issue further (the "**2015 Action**"). PVCOA—obviously advocating for the corporate interests of DRI, and not those of PVCOA as an ostensible nonprofit entity purporting to serve the collective interests of 25,000 private members— vigorously opposed the disclosure of its books and records. Zwicky, after obtaining court orders compelling disclosure of certain financial documents, discovered that PVCOA's board, year after year, had been hiding DRI's internal corporate overhead expenses in PVCOA's annual budgets

and passing them off as its legitimate common expenses. These hidden charges greatly inflated the cost of each member's annual obligations.

As stated, DRI, through its wholly-owned subsidiary ILX Acquisition Inc. ("**ILX**"), or in its own corporate capacity, holds a massive Bulk Membership in PVCOA. This is a perpetually-renewing source of ownership and control of the Association, because it reflects the developer's unsold inventory, including a number of forfeited timeshare interests. This number grew, and continues to grow, because DRI's inflated annual fees have consistently caused a great many disaffected members to default on their obligations. (The Minutes of one Board meeting refer to an assessment delinquency rate of approximately 30%—a fact fundamentally affecting the financial integrity of PVCOA never explicitly disclosed to the general membership.)

Each year, the board of each Component Site HOA prepared an annual budget allegedly estimating its common expenses for the upcoming year. PVCOA (on an entity level) was responsible for paying its pro rata share of HOA common expenses, based on the Association's ownership interests in the Component Site resorts. DRI stacked the Boards of these HOAs with DRI-employed executives, in the same manner that it stacked the Board of the Collection. DRI also caused each HOA to hire DRM as property manager for each individual resort.

Zwicky's 2015 Action uncovered that the assessments—i.e., both those of the PVCOA (billed directly to individual timeshare owners), and the assessments of the local HOAs proportionately charged to PVCOA (paid indirectly by PVCOA members)—included hidden subsidies of DRI's internal overhead expenses. In later years, some portions of these illicit charges were cryptically referred to in accounting records by the nonspecific and opaque term, "**Indirect Corporate Cost**"). These hidden charges were either skimmed off the top and funneled directly to DRI, or paid to DRM as surreptitious and improper

enhancements of its management fee, resulting in payments to DRM far exceeding the 15% limit prescribed by the organic documents of the Association.

In this way, PVCOA—allegedly a non-profit corporation, but actually a de facto instrumentality of DRI—collected enormous excess revenues from timeshare owners, all to the ultimate benefit of DRI. Each and every Defendant knew of the scheme and substantially participated in the preparation and dissemination of those annual budgets and billing statements which materially misrepresented the actual "common expenses" of the Association (a defined term that does *not* include DRI's internal overhead) because these documents contained massive hidden charges.

2. Legal Bases of Plaintiff's Claims

Zwicky asserts three causes of action against all Defendants: Federal civil RICO, Arizona civil RICO, and breach of fiduciary duty.

(a) Federal Civil Rico

It is "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). Each Defendant herein is a "person" within the meaning of the statute because they are an "individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3). PVCOA is a RICO "enterprise" because it is a "corporation, association, or other legal entity" with a legally separate and distinct existence from all the other Defendants. 18 U.S.C. § 1961(4). Each Defendant committed or participated in the commission of the RICO predicate offenses of federal mail and wire fraud. *See* 18 U.S.C. §§ 1341, 1343, 1961. Each Defendant participated in the use of the mails or wire communications to obtain money by means of false or fraudulent pretenses or representations. *See id.* Specifically, Defendants used the Postal Service to mail annual budgets and billing statements containing affirmative misrepresentations and

omissions and posted the same to DRI's website. *See Eller v. EquiTrust Life Ins. Co.*, 778 F.3d 1089, 1092 (9th Cir. 2015) (finding mail and wire fraud "can be premised on either a non-disclosure or an affirmative misrepresentation") (citation omitted); *Bias v. Wells Fargo & Co.*, 942 F. Supp. 2d 915, 939 (N.D. Cal. 2013) (holding that Bank's imposition of "hidden charges" by subsidiaries in foreclosure proceedings and "disguising" them as "other charges" constituted "omissions [that] are interwoven with misrepresentations" for RICO purposes).

Each Defendant committed or participated in a "pattern of racketeering activity" by repetition of that mail and wire fraud every year from 2011 through the present day (recurring events after 2016 are pled upon information and belief). *See* 18 U.S.C. § 1961(5). Each instance of the pattern's commission was repetitive, continuous, and consistent in that the fraudulent budgets and billing statements containing hidden overcharges differed only in dollar amounts.

Each and every Defendant is liable for DRI's scheme of illegally misrepresenting its overhead expenses as PVCOA's legitimate common expenses, and passing them onto PVCOA members like Zwicky, as alleged with particularity in the SAC. *See e.g.*, *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (finding that, in a fraud suit involving multiple defendants, the plaintiff need only "identify the role of each defendant in the alleged fraudulent scheme" because "[p]articipation by each conspirator in every detail in the execution of the conspiracy is unnecessary to establish liability, for each conspirator may be performing different tasks to bring about the desired result."); *S. Union Co. v. Sw. Gas Corp.*, 165 F. Supp. 2d 1010, 1018 (D. Ariz. 2001) (noting that when "false or misleading information is conveyed in . . . group-published information, it is reasonable to presume that these are the collective actions of the officers"); *Bowoto v. Chevron Texaco Corp.*, 312 F. Supp. 2d 1229, 1238–40 (N.D. Cal. 2004) ("when one corporation is

controlled by another, the former acts not for itself but as directed by the later, the same as an agent [and the] principal is liable for the acts of its agent within the scope of the agent's authority"); *Wells Fargo Bank v. Ariz. Laborers, Teamsters, and Cement Masons Local No. 395 Pens. Tr. Fund*, 38 P.3d 12, 23 (Ariz. 2002) ("a person who aids and abets a tortfeasor is himself liable for the resulting harm to a third person"); *Kisner v. Broome*, No. 1 CA-CV 16-0502, 2017 WL 6462245, at *8 ("civil conspiracy . . . requires that (1) two or more individuals agree to commit a tort, and (2) they do so").

The Board Defendants participated in the preparation and dissemination of each annual budget and the billing statements generated using the same, knowing that the documents contained fraudulent misrepresentations. While doing so, Board Defendants were beholden to DRI's direction and control as its agents and employees. DRM, as PVCOA's managing agent, participated by inflating its management fees for the purpose of allowing the Defendants to hide DRI's corporate overhead expenses therein, and thus acted on DRI's behalf as its agent.

ILX, as PVCOA's developer, enjoyed overwhelming voting power over each HOA board, thus allowing it to install DRI's executives therein and have the boards hire DRM without allowing outside bidding from companies unaffiliated with DRI; it thus also acted as DRI's agent.

Defendants Stephen J. Cloobeck ("**Cloobeck**"), David F. Palmer ("**Palmer**"), and C. Alan Bentley ("**Bentley**") (collectively, "**Executive Defendants**"), as Chief Executives of DRI, devised or participated in the scheme, reviewed and approved annual budgets, and were beholden to DRI as its agents and employees. The Executive Defendants illicitly and individually profited from the scheme by virtue of their substantial stock ownership in DRI. DRI itself is *directly* liable for the wrongful conduct of its own employees (the Board Defendants and the Executive Defendants) under straightforward respondeat superior

principles. *Baker ex rel. Hall Brake Supply, Inc. v. Stewart Title & Tr. of Phoenix, Inc.*, 197 Ariz. 535, 540, 5 P.3d 249, 254 (Ct. App. 2000) ("An employer is vicariously liable for the negligent or tortious acts of its employee acting within the scope and course of employment.") (citations omitted); *In re Tesla, Inc. Sec. Litig.*, 477 F. Supp. 3d 903, 926 (N.D. Cal. 2020) ("It is beyond dispute that a corporation can be liable for the fraud committed by its officers, so long as the officer commits it within the scope of his or her employment."); *see also Pearson v. Component Tech. Corp.*, 247 F.3d 471, 486–87 (3d Cir. 2001) ("[I]t has long been acknowledged that parents may be "directly" liable for their subsidiaries' actions when the "alleged wrong can seemingly be traced to the parent through the conduit of its own personnel and management, …") (quoting *United States v. Bestfoods*, 524 U.S. 51, 64 (1998)).

In addition to direct liability, each Defendant has joint, vicarious or imputed liability under aiding and abetting, conspiracy, and agency principles.

(b) *Arizona Civil RICO*

A.R.S. §§ 13-2312 *et seq.* prohibits being employed or associated with an enterprise and conducting—or directly or indirectly participating in conducting—its affairs through racketeering. *See* A.R.S. § 13-2312(B). PVCOA is an "enterprise" because it is a corporation, association, or other legal entity. A.R.S. § 13-2301(D)(2). Defendants' conduct constitutes a "pattern" of racketeering activity through the repetitive commission of a fraudulent scheme and artifice, which is a predicate offense under the Arizona RICO statute. *See* A.R.S. § 13-2310(D)(4)(b)(xx). Specifically, Defendants, pursuant to a scheme or artifice to defraud, knowingly obtained a benefit by the means of false or fraudulent pretenses, representations, or material omissions in the budgets and billing statements disseminated annually to Association members. A.R.S. § 13-2310(A).

The Defendants jointly conspired or participated in DRI's scheme to foist its

corporate overhead expenses onto unknowing PVCOA members through materially misrepresenting the same as legitimate common HOA expenses. *See* A.R.S. § 13-2314.04(L) (imposing direct or vicarious liability upon a person for another's acts if he or she "authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the other" or, if he or she was a "director or high managerial agent" that "performed, authorized, requested, commanded, ratified or recklessly tolerated" the unlawful conduct of an agent). Moreover, theories such as aiding and abetting, conspiracy, and agency—as identified above as a basis for Defendants' liability in Zwicky's Federal RICO claim—apply with equal force to his Arizona RICO claim.

(c) *Breach of Fiduciary Duty*

A.R.S. §§ 33-2201 *et seq.*, the Arizona Timeshare Owners' Association and Management Act (the "**Timeshare Act**"), imposes fiduciary duties upon DRM and ILX as PVCOA's managing agent and developer, respectively. Under the common law, ILX owed additional fiduciary duties to PVCOA members by virtue of its overwhelming voting power. *See e.g.*, *Wichansky v. Zowine*, 150 F. Supp. 3d 1055, 1067 (D. Ariz. 2015) (stating that "controlling shareholders owe fiduciary duties to the corporation and its shareholders"); *In re Tri-Star Pictures, Inc. Litig.*, 634 A.2d 319, 328 (Del. 1993) (finding that a minority shareholder may achieve dominant control, for fiduciary purposes, through voting power acquired by agreement). Each of the Board Defendants also had common law fiduciary duties of honesty and full disclosure to individual members. *Atkinson v. Marquart*, 112 Ariz. 304, 306, 541 P.2d 556, 558 (1975) ("In Arizona a director of a corporation owes a fiduciary duty to the corporation and its stockholders. This duty is in the nature of a trust relationship ...."); and *see* FLETCHER CYCLOPEDIA OF CORPORATIONS, § 844.10 ("The fiduciary relationship and obligations of corporate directors or officers generally apply to all kinds or types of corporations, including charitable or nonprofit corporations....").

Defendants are also liable for fiduciary breaches by each other under aiding and abetting, agency, and conspiracy principles.

B. Defendants' Position(s)

Pursuant to Rule 26(f)(2), Defendants represent that their position regarding the nature and basis of Zwicky's claims and their defenses are as follows:

1. Factual Basis for Defendants' Defenses

Defendants[2] largely deny the allegations of Plaintiff, deny that Plaintiff has properly stated any claim against Defendants, and deny that Plaintiff is entitled to any relief in this action.

Plaintiff's allegations – now in the form of a Second Amended Complaint (the "**SAC**") – demonstrate a failure to recognize corporate formalities, various laws allowing management entities to pass on management costs to owners, the structure and benefits of the Collection, and the efficient operation of the Collection for the benefit of the members or owners. First, through a management contract, DRM (identified as "DRMI" above) is the management company for PVCOA. As the management company, DRM is entitled to earn an agreed upon fee and recover its costs incurred in managing PVCOA. In terms of costs, economies of scale dictate that DRM should pass costs to the associations it manages, including PVCOA, more efficiently by operating various departments collectively and then passing the costs to the associations. For example, DRM handles IT functions for the associations that it manages. In so doing, DRM can either provide separate IT services – a separate website, separate IT personnel, separate IT systems and servers – to each association at a higher cost or DRM can collectively provide those IT services to the managed associations at a collectively lower cost. By choosing the latter, DRM can more

[2] For the purposes of this Case Plan, Defendants do not include Riddle (who has now been dismissed), or Al Bentley or Stephen Cloobeck, as Cloobeck or Bentley have not been served at this time.

economically provide various services to the managed associations. This is legally permissible and is the more logical approach. Plaintiff's allegations and claims ignore these facts.

In making allegations against Defendants – but, curiously, not against PVCOA – Plaintiff also ignores that Kohl's Ranch and the other Component Sites now within PVCOA were severely underfunded by the prior developer, management association, and owners association(s). Indeed, while Plaintiff complains that his fees increased since 2009, Plaintiff fails to recognize that the prior developer filed for bankruptcy protection in the United States District Court for the State of Arizona in March of 2009. The bankruptcy was indicative of how the Component Sites acquired by ILX were woefully underfunded, which was necessarily cured, in part, by increased assessments. The increased assessments to Plaintiff also allowed Plaintiff to enjoy an enhanced suite of benefits of owning within the Collection. While Plaintiff has conveniently chosen to ignore these facts, they establish why his maintenance fees increased over time.

Beyond these initial issues, Defendants remain uncertain regarding the actual allegations lodged against each of them respectively in the SAC because Plaintiff appears to be unable to properly allocate allegations clearly against the legally distinct Defendants. If and when properly pled, Defendants will be able to more fully defend themselves against Plaintiff's factual allegations.

2. Legal Bases of Defendants' Defenses

As Plaintiff has still failed to state a viable claim against any Defendant, Defendants rely upon their respective motions to dismiss (*see* Doc. Nos. 39, 40, 46, 47; collectively, the "**Motions to Dismiss**") to outline the legal defenses to Plaintiff's claims. As the Court has already received extensive briefing on the issues outlined in the Motions to Dismiss, Defendants will not restate those briefs herein, but Defendants do incorporate their

arguments herein by reference. Whether because of Plaintiff's lack of standing to assert these derivative claims, because Plaintiff failed to act with any diligence to avoid the statutes of limitations, or because Plaintiff has not properly stated any claims, Defendants assert that the SAC must be dismissed. Defendants submit that an expedited resolution of the Motions to Dismiss will result in the dismissal with prejudice of this action.

II. ELEMENTS OF PROOF

The parties have considered the elements of proof regarding their claims and defenses pursuant to Rule 26(f)(2).

A. Plaintiff's Position

Pursuant to Fed.R.Civ.P. 26(f)(2), Plaintiff Zwicky represents that his burden of proof is as follows:

(a) *Federal Civil RICO*

To prove a civil RICO claim under 18 U.S.C. § 1964(c), Zwicky must show: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to [his] 'business or property.'" *E.g. Abcarian v. Levine*, 972 F.3d 1019, 1028 (9th Cir. 2020) (quoting *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996)). An "enterprise" must have "some sort of structure for the making of decisions and some mechanisms for controlling and directing the affairs of the group on an on-going, rather than an ad hoc, basis." *Acro-Tech, Inc. v. Robert Jackson Family Tr.*, 84 Fed. Appx. 747, 749 (9th Cir. 2003). Moreover, the enterprise must "be a separate entity apart from the pattern of racketeering activity in which it engages." *Id.* A "pattern" of racketeering activity requires the commission of at least two predicate acts, typically occurring over a substantial and continuous period of time, that are not isolated or sporadic events. *E.g. United States v. Camez*, 839 F.3d 871, 873 (9th Cir. 2016); *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1528 (9th Cir. 1995); *Sun Sav. & Loan Ass'n v. Dierdorff*, 825 F.2d 187, 194 (9th Cir. 1987). "Causation" requires that the plaintiff show that the conduct has proximately caused harm to

his business or property. *E.g. Nutrition Distribution LLC v. Custom Nutraceuticals LLC*, 194 F. Supp. 3d 952, 957 (D. Ariz. 2016) (citing *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 991 (9th Cir. 2014)). As for "conduct," respondeat superior may be applied if the employer benefited from its employee's RICO violation, which he or she committed within the course and scope of his or her employment. *Marceau v. International Broth. Of Elec. Workers*, 618 F. Supp. 2d 1127, 1172 (D. Ariz. 2009) (citing *Brady v. Diary Fresh Prods. Co.*, 974 F.2d 1149, 1153 (9th Cir. 1992)).

Two qualifying Federal RICO predicate acts are mail and wire fraud. *See* 18 U.S.C. §§ 1341, 1343, 1961. Mail and wire fraud require a showing that (1) a person or entity, (2) "having devised or intending to devise any scheme or artifice to defraud," (3) uses the mail or wires (4) for the purpose of executing such a scheme or artifice or attempting to do so. *E.g. Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 647 (2008) (stating that "any mailing that is incident to an essential part of the scheme satisfies the mailing element, even if the mailing itself contains no false information" (citing *Schmuck v. United States*, 489 U.S. 705, 712 (1989))).

Specific intent to defraud is an element of the predicate acts of wire or mail fraud. *E.g. Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404 (9th Cir. 1991) (citing 18 U.S.C. § 1341). Moreover, use of the mail or wires "to execute or attempt to execute a scheme to defraud is . . . a predicate act of racketeering under RICO, even if no one relied on any misrepresentation" in any such mails or wires. *Id.* at 648–50 (citing *Neder v. United States*, 572 U.S. 1, 24–25 (1999) ("the common-law requirement of 'justifiable reliance' plainly has no place in the mail, wire, or bank fraud statutes")). Plaintiff need not show evidence that each Defendant personally used the mail or wires; "[u]se . . . need only be reasonably foreseeable as part of the alleged scheme." *Ikuno v. Yip*, 912 F.2d 306, 311 (9th Cir. 1990) (citations omitted).

(b) Arizona Civil Rico

The Arizona racketeering statute requires Plaintiff to prove, by a preponderance of the evidence, "(1) an act (2) that would be punishable by imprisonment for more than one year under the laws of [Arizona] regardless of whether the act is charged or indicted, (3) involving any one of a number of enumerated offenses (4) committed for financial gain." A.R.S. § 13-2314.04(G); *Donahoe v. Arpaio*, 869 F. Supp. 2d 1020, 1065–66 (D. Ariz. 2012) (internal marks, citations omitted). Natural persons may be liable for the racketeering acts of others if "the natural person authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of another." A.R.S. § 13-2314.04(L).

Likewise, enterprises can be liable for the racketeering acts of an agent if "a director or high managerial agent performed, authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the agent." *Id.* "Financial gain" means "any benefit, interest or property of any kind." A.R.S. § 13-2314.04(T)(2). A "pattern of racketeering activity" requires a showing that Defendants committed at least two predicate acts, with the last act occurring within five years of the prior act. A.R.S. § 13-2314.04(T)(3)(a). Moreover, the pattern of acts must be "related to each other or a common organizing principle" such that they "have the same or similar purpose, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics" and are "continuous or exhibited the threat of being continuous." *Id.* An "enterprise" is any corporation, partnership, association, labor union or other legal entity or any group of persons associated in fact although not a legal entity." A.R.S. § 12-2301(D)(2).

A qualifying Arizona RICO predicate act is "scheme or artifice to defraud," which exists when a "person, who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions." A.R.S. §§ 12-2301(D)(4)(b)(xx); 13-2310(A). "Reliance on the part of any person shall not be a necessary element of the offense" and a scheme or artifice to defraud

also "includes a scheme or artifice to deprive a person of the intangible right of honest services." A.R.S. § 13-2310(B) & (D). "The scheme need not be fraudulent on its face but must involve some sort of fraudulent misrepresentation or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension." *State v. Henry*, 68 P.3d 455, 458 ¶ 12 (Ariz. App. 2003) (citing *State v. Haas*, 675 P.2d 673, 678 (Ariz. 1983)).

"The term 'defraud' as used in the statute is not measured by any technical standard but, rather, by a 'broad view.'" *Id.* (citing *Haas*, 675 P.2d at 684). The statute thus "encompasses a very broad range of fraudulent activities" and bars any person from participating in knowingly leading another "to believe a state of facts which is not true and when this has been accomplished by either active misrepresentations, or omitting material facts which [a participant] knew were being misunderstood, or by stating half-truths or by any combination of these methods." *State v. Watson*, 459 P.3d 120, 125 ¶ 13 (Ariz. App. 2020) (citing *Haas*, 675 P.2d at 682–83). Thus, a "false or fraudulent misrepresentation" includes "concealment and statements of half-truths and "false pretense" includes "any subterfuge, ruse, trick, or dissimulation upon another." *Id.* (citing *State v. Johnson*, 880 P.2d 132, 134–35 (Ariz. 1994)); *see also Bias*, 942 F. Supp. 2d at 939 (Bank's imposition of "hidden charges" and "disguising" them as "other charges" constituted "omissions [that] are interwoven with misrepresentations").

(c) *Breach of Fiduciary Duty*

In an action asserting a claim for breach of fiduciary duty, "a plaintiff must allege and prove the existence of a duty owed, a breach of that duty, and damages causally related to such breach." *Surowiec v. Capital Title Agency, Inc.*, 790 F. Supp. 2d 997, 1004 (D. Ariz. 2011) (citing *Smethers v. Campion*, 108 P.3d 946, 949 (Ariz. App. 2005)). A defendant can also be liable under the theory of aiding and abetting a breach of fiduciary duty; such a claim "requires proof of the following elements: (1) the primary tortfeasor must commit a

tort causing injury to the plaintiff; (2) the defendant must know the primary tortfeasor's conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in achieving the breach." *Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 276 P.3d 11, 40 ¶ 97 (Ariz. App. 2012) (citing *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Tr. Fund*, 38 P.3d 12, 23 ¶ 34 (Ariz. 2002)). Arizona also recognizes claims for conspiracy to violate fiduciary duties. *Wells Fargo Bank*, 38 P.3d at 36 ¶ 99 ("For a civil conspiracy to occur two or more people must agree to accomplish an unlawful purpose or to accomplish a lawful object by unlawful means, causing damages." (internal citations omitted)); *Kisner*, 2017 WL 6462245, at *8 ("Civil conspiracy [based on breaches of fiduciary duties] requires that (1) two or more individuals agree to commit a tort, and (2) they do so.") (internal marks omitted). Under agency principles, as well, a principal "is liable for the acts of its agent within the scope of the agent's authority." *E.g. Bowoto*, 312 F. Supp. 2d at 1238–40.

Under the Timeshare Act, property managers acting as "Managing Entit[ies]" stand "in the capacity of a fiduciary to the owners of timeshare interests in the timeshare plan." A.R.S. § 33-2203(B). Officers and directors of a business entity owe common law fiduciary duties to shareholders. *E.g. Atkinson v. Marquart*, 541 P.2d 556, 558 (Ariz. 1975) ("In Arizona a director of a corporation owes a fiduciary duty to the corporation and its stockholders. This duty is in the nature of a trust relationship.").

Moreover, under the common law, a majority shareholder or a shareholder that achieves dominant control of a business entity through other means (such as a voting agreement) owes other shareholders fiduciary duties. *See e.g.*, *Wichansky*, 150 F. Supp. 3d at 1067; *In re Tri-Star Pictures*, 634 A.2d at 328.

Breach of a fiduciary duty happens when the person or entity so charged fails to "deal fairly, not fraudulently, and to disclose the true facts, not deceive." *E.g. Cal X-Tra*,

276 P.3d at 27 ¶ 42 (Ariz. App. 2012) (collecting cases). A fiduciary that profits from speaking falsely or refusing to reveal the truth has also breached his or her duties. *See id.* (citations omitted). In Arizona, one with a fiduciary duty must conduct his or her affairs with "scrupulous honesty." *Tucson Title Ins. Co. v. D'Ascoli*, 383 P.2d 119, 121–22 (Ariz. 1963); *AMERCO v. Shoen*, 184 Ariz. 150, 157, 907 P.2d 536, 543 (Ariz. App. 1995) (approving jury instruction that corporate fiduciary must "act with the highest degree of honesty, loyalty, good faith and fair dealing"). A duty to disclose material facts is a fundamental incident of fiduciary status. *See e.g., Glaziers & Glassworkers Union Local No. 252 Annuity Fund v. Newbridge Sec., Inc.*, 93 F.3d 1171, 1180 (3d Cir.1996) ("[A] fiduciary has a fundamental duty to furnish information . . . [that] entails not only a negative duty not to misinform, but also an affirmative duty to inform when . . . that silence might be harmful."); *In re Est. of Thurston*, 16 P.3d 776, 780 (Ariz. App. 2000) (fiduciary has duty to "disclose the true facts"). Indeed, "[t]he duty to disclose material information is the core of a fiduciary's responsibility." *Eddy v. Colonial Life Ins. Co. of Am.*, 919 F.2d 747, 750 (D.C.Cir.1990).

B. Defendants' Position(s)

For the reasons stated in the various Motions to Dismiss, Plaintiff cannot maintain the claims in the SAC. In addition, Plaintiff has failed to properly allege a viable claim against Defendants. The Motions to Dismiss are still pending before the Court, therefore Defendants have not alleged any affirmative defenses at this time. However, the burden of proof for each alleged claim, along with establishing that class adjudication is appropriate, is on Plaintiff.

III. FACTUAL AND LEGAL ISSUES IN DISPUTE

Pursuant to FRCP 26(f)(2), the parties currently dispute the following issues which—as the case progresses, the parties may be able to narrow by stipulation or motion:

A. Plaintiff's Position

At this early stage, all factual and legal issues are currently in dispute.

B. Defendants' Position(s)

As Defendants have not filed an answer to the SAC, all factual and legal issues are currently in dispute.

IV. JURISDICTIONAL BASIS OF THE CASE

Pursuant to Rule 26(f)(2), the parties state the following positions regarding jurisdiction.

A. Plaintiff's Position

This Court has concurrent subject matter jurisdiction over Zwicky's Federal RICO claims, 28 U.S.C. § 1331; and supplemental jurisdiction over the claims he asserts under Arizona RICO and common law.28 U.S.C. § 1367. The Court also has original jurisdiction over the alleged class action under 28 U.S.C. § 1332(d)(2) (the Court has original jurisdiction over a class action where the matter involves at least 100 plaintiffs, at least $5,000,000 in controversy, and any member of the class is a citizen of a state different from any defendant).

Under Arizona's long-arm statute, this Court has general personal jurisdiction over ILX, a Delaware corporation with a principal place of business in Arizona, and DRM, an Arizona corporation. *See* Ariz. R. Civ. Pro. 4.3(a). The Court has specific jurisdiction over the other Defendants through their "sufficient contacts with the forum state in relation to the cause of action" and/or by virtue of the fact that each Defendant participated in the commission of intentional torts therein, knowing or having reason to know that such conduct would have a significant effect in the forum. *Calder v. Jones*, 465 U.S. 783, 789–90 (1984); *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). Additionally, ILX and DRM's contacts with the forum may be imputed to DRI through alter-ego principles. *See e.g., Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001); *MMI, Inc. v. Baja Inc.*, 743

F. Supp. 2d 1101, 1111 (D. Ariz. 2010). Agency principles also allow the court to assert jurisdiction over all Defendants that acted as agents of any individual or entity subject to this court's jurisdiction and over all Defendants that directed the actions of their own agents or subsidiaries. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017) (stating requirements of "agency" theory in light of *Daimler AG v. Bauman*, 571 U.S. 117, 134–39 (2014)).

In RICO conspiracies, especially, the Court exercises jurisdiction over a parent or subsidiary upon finding that they acted with "a community of interest" or when the "alleged wrong can be traced to the parent through the conduit of its own personnel and management." *See United States v. Bestfoods*, 524 U.S. 51, 64 (1998) (internal citation omitted); *Webster v. Omnitrition Int'l, Inc.*, 79 F.3d 776, 787 (9th Cir. 1996); *cf. United States v. Benny*, 786 F.2d 1410, 1416 (9th Cir. 1986) (stating that the corporate form is the "sort of legal shield for illegal activity that Congress intended RICO to pierce"). *See also*, *Fletcher Cyclopedia of Corporations*, § 8642.50 (stating that under "conspiracy theory of jurisdiction," a non-resident member of conspiracy to defraud with substantial effects on forum state may be subject to forum state jurisdiction (listing authority)). Lastly, the Court has statutory jurisdiction over all Defendants by virtue of Zwicky's assertion of their Federal RICO violations. *See Laurel Gardens, LLC v. Mckenna*, 948 F.3d 105, 116–17 (3rd Cir. 2020) (finding that five Circuits, including the Ninth, have found that 18 U.S.C. § 1965 provides the Court with a statutory basis for its exercise of jurisdiction over all co-conspirators in a RICO conspiracy provided that the Court has personal jurisdiction over at least one, notwithstanding the statute (citing *Butcher's Local Union No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538–39 (9th Cir. 1986))) (other citations omitted); *accord Larsen v. Lauriel Investments, Inc.*, 161 F. Supp. 2d 1029, 1051 (D. Ariz. 2001) (citing 18 U.S.C. § 1965).

B. Defendants' Position(s)

As stated in more detail in the Motions to Dismiss, the Court lacks personal jurisdiction over DRI. Defendants also believe that the Court lacks personal jurisdiction over David Palmer, which issue will be outlined in Palmer's forthcoming motion to dismiss.

V. SERVICE OF THE PARTIES

All Defendants have been served with the exception of Defendants Cloobeck and Bentley. Upon Plaintiff's information and belief, those Defendants are avoiding Plaintiff's service attempts; Plaintiff has located them in Las Vegas, Nevada and Jacksonville, Florida, respectively. If Plaintiff has not already done so by the filing of this Case Plan, Plaintiff shall soon file a motion requesting that the Court extend his deadline to serve Cloobeck and Bentley and allow service by alternative methods pursuant to Arizona law.

VI. DISPOSITIVE MOTIONS

A. Plaintiff's Position

Several Defendants' motions to dismiss are currently pending before this Court. *See* Doc. 39, 40, 46, & 47. Plaintiff's positions to the issues raised therein are stated in his responses to the same. *See* Doc. 51, 55, 56, & 67 (respectively). Plaintiff reserves the right to add additional grounds for dispositive motions as the same arise.

B. Defendants' Position(s)

Plaintiff correctly identifies the pending Motions to Dismiss. The Motion to Dismiss filed by DRM and ILX has been fully briefed. The parties have requested oral argument on the same, but the Motion to Dismiss is otherwise ready for review by the Court. Defendants state that such motions are dispositive in this case and will result in a dismissal with prejudice of this action. An expedited ruling on those motions will preserve judicial economy and prevent an unwarranted fishing expedition of Defendants – some of whom have not worked at Diamond Resorts for many years.

VII. REFERENCE

The parties agree that this case is not suitable for reference to arbitration or a United States Magistrate Judge for further proceedings.

VIII. RELATED CASES

None still pending at this time.

IX. INITIAL DISCLOSURES

The parties have agreed to mutually exchange initial disclosures pursuant to FRCP 26(a)(1) pursuant to the proposed deadlines appearing below.

X. PROPOSED DEADLINES

Pursuant to FRCP 26(f)(2), the parties have proposed the following discovery plan and case deadlines.

May 11, 2021	The Court holds a scheduling conference.
May 25, 2021	The parties exchange Initial Disclosure Statements pursuant to FRCP 26(a)
June 30, 2021	All parties shall file any motion to dismiss pursuant to FRCP 12(b) or any similar rule or procedure.
TBD	The Court holds oral argument(s) regarding Defendants' motions to dismiss.
July 1, 2021	The parties shall complete negotiations regarding any electronically-stored information ("**ESI**"), confidentiality, and/or protective orders regarding discoverable matters. If agreement is not possible, the parties shall thereafter advise the Court as to outstanding unresolved issues and request an appropriate briefing schedule for resolution of the same.
July 6, 2021	According to the agreement of the parties, discovery regarding class certification shall open. The parties agree that merits discovery shall not open at this time.
January 10, 2022	Discovery regarding class certification ends.

February 1, 2022	Plaintiff shall file a motion for class certification and any accompanying expert declaration(s), making all expert(s) available for deposition thereafter.
April 18, 2022	Defendants shall file their opposition to the motion for class certification and any accompanying expert declaration(s), making all expert(s) available for deposition thereafter.
June 20, 2022	Plaintiff shall file a reply brief in support of class certification.
TBD	The Court holds oral argument, if necessary or requested, regarding class certification.
July 18, 2022	Discovery regarding the factual merits of the case shall open unless the parties are still involved in adjudication of Plaintiff's motion for class certification. If so, merits discovery shall open the first business day following the Court's decision on Plaintiff's motion for class certification; moreover, all deadlines regarding merits discovery, as stated below, shall be similarly delayed accordingly.
September 5, 2022	Parties with the burden of proof on issues or defenses shall make any expert disclosures or declarations under FRCP 26(a)(2) and make the same available for deposition.
October 14, 2022	Parties that do not have the burden of proof regarding issues or defenses shall make any responsive expert disclosures or declarations and make the same available for deposition pursuant to FRCP 26(a)(2).
October 28, 2022	All parties shall make rebuttal expert disclosures regarding open discoverable issues pursuant to FRCP 26(a)(2).
November 30, 2022	The parties shall complete service of all requests or motions for discovery, including any motions for leave to amend complaints or answers or add any claims or parties pursuant to FRCP 15.
December 30, 2022	Deadline for the parties to complete any private settlement mediation, negotiation, or similar regarding outstanding issues.
January 18, 2023	The parties shall complete service of all final requests and motions regarding discovery.

February 13, 2023	Discovery shall close.
March 20, 2023	The parties shall submit any summary judgment motions and any accompanying expert declaration(s), making all expert(s) available for deposition thereafter.
June 5, 2023	The parties shall file all responsive briefs in opposition to all motions for summary judgment and any accompanying expert declaration(s), making all expert(s) available for deposition thereafter.
August 7, 2023	The parties shall file all reply briefs in support to all motions for summary judgment.
TBD	The Court holds oral argument, if necessary or requested, regarding all summary judgment motion(s).
TBD	The parties shall file all motions *in limine*.
TBD	The parties shall file all *Daubert* motions.
TBD	The parties have a final pre-trial conference.
TBD	Trial on all outstanding issues begins.

XI. SCOPE OF DISCOVERY

A. Plaintiff's Position

Consistent with Rule 33, interrogatories should be limited, initially, to twenty-five (25) each, but the parties may, for good cause, petition the Court for any additional interrogatories or submit to the Court any agreement to lift such cap at a future date, as necessary.

Due to the number of Defendants currently involved in this matter and the complexity of the corporate structures involved, however, the ten-deposition limit in FRCP 30 should be lifted to twenty (20) per side and depositions of any opposing party's expert should not count against that limit. The parties may, for good cause, petition the Court for

any additional depositions or submit to the Court any agreement to lift the cap further at a future date, as necessary.

B. Defendants' Position(s)

Given the current state of the pleadings, and the lack of a properly pled claim by Plaintiff, Defendants do not agree that Plaintiff should be permitted to proceed with discovery on any of his claims. Indeed, resolution of the Motions to Dismiss should end this action. However, to the extent that discovery is permitted to proceed, Defendants currently object to the increase of any discovery by Plaintiff beyond that permitted by the Federal Rules of Civil Procedure.

XII. TRIAL ESTIMATE

The parties believe that the length of trial shall be determined by the resolution of Defendants' Motions to Dismiss, the adjudication of Plaintiff's forthcoming motion for class certification, and any applicable motions for summary judgment and are therefore unable to determine the length of trial at this time. Proposed dates for trial are contained above in Section X, *supra*.

XIII. JURY TRIAL REQUEST

Plaintiff has requested a trial by jury. Defendants have not contested this request.

XIV. SETTLEMENT

The parties believe that, at an appropriate time after the completion of at least some discovery, a settlement conference or private outside mediator, as the parties may collectively select, would be useful. Depending upon rulings on the motions now pending, the parties will consider the potential benefits of early mediation. A proposed deadline for said settlement negotiations is contained above in Section X, *supra*.

XV. CLASS ACTION

A. Plaintiff's Position

This case is suited for adjudication on a class basis pursuant to Fed.R.Civ.P. 23 and

the Class Action Fairness Act of 2005. The matter meets the initial prerequisites of Rule 23(a) of numerosity, commonality, typicality, and adequacy. *E.g. Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 19-56514, 2021 WL 1257845, at *3 (9th Cir. Apr. 6, 2021) (citations omitted). Namely, the class consists of approximately 25,000 plaintiffs across numerous forums such that joinder is impractical. The class shares the same questions of fact and law and claims and defenses as the same pertain to PVCOA annual budgets, billing statements, and if the Defendants collectively participated in a fraudulent scheme to conceal DRI's corporate overhead expenses therein. Adequacy is met because Zwicky has no interests antagonistic to the class (or, any such conflicts may be cured by amendment to add additional or substitute putative representatives). Furthermore, Zwicky and Arizona-licensed counsel have already pursued Zwicky's record inspection rights against PVCOA in the 2015 Action, without which the material facts giving rise to this action would have remained undiscovered. Counsel has experience in complex timeshare consumer rights litigation against developers and involving thousands of timeshare owners. Counsel is additionally willing and able to secure and devote the legal and financial resources necessary to fund the prosecution of this action.

The matter, which seeks monetary damages, also meets the additional prerequisites imposed by Fed.R.Civ.P. 23(b)(3): predominance and superiority. *E.g. Olean Wholesale Grocery*, 2021 WL 1257845 at *3 ("a putative class must also establish that the questions of law or fact common to class members predominate over any questions affecting only individual members."); *Knapper v. Cox Communications, Inc.*, 329 F.R.D. 238, 246 (D. Ariz. 2019) (stating that the superiority requirement tests "whether a class action is superior to other available methods for fairly and efficiently adjudicating the controversy" or, in other words, "class wide litigation will reduce litigation costs and promote greater efficiency" (citing *Valetino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996))).

Class adjudication is superior to other methods of litigation in that all prospective class members share the same type of damages, which all arise from the same conduct of Defendants. Calculation of each plaintiff's damages will be a largely ministerial exercise; the same is readily calculable based on the class member's specific years of membership and the number of Points he or she possessed in his or her Points Certificate for said years. While certain class members may have signed mutual releases in connection with the Arizona Attorney General's proceedings against DRI in 2016, other settlement or debt collection proceedings, or are otherwise bound by mandatory arbitration agreements, the same may be excluded from the class by use of Defendants' records, divided into subclasses pursuant to Fed.R.Civ.P. 23(c)(5), or Defendants may agree to include any number of the same within this class for the purpose of achieving global peace. Further, given the size and power of well-funded corporate Defendants such as DRI, each plaintiff has claims too small to economically justify his or her own separate litigation efforts, which would require naming all Defendants in the same action and establishing jurisdiction over each of them in numerous forums. Lastly, because the class is so large and located in so many forums, individual litigation would also pose a risk of numerous inconsistent adjudications on identical facts and legal issues against the same Defendants such that class treatment promotes judicial economy and the most efficient use of the Court's limited resources while vindicating the rights of all class members in a single, unified proceeding and achieving global peace for all Defendants.

B. Defendants' Position(s)

Defendants do not agree that this matter is appropriate for class adjudication. First, Plaintiff lacks standing to pursue these claims on behalf of himself or a class as each of the claims (to the extent there are even claims at all) are derivative claims that belong to PVCOA directly, and not the members of PVCOA. Stated differently, if DRM did not

allegedly overcharge costs to PVCOA, then PVCOA would not have allegedly passed such increased costs to Plaintiff (or his purported, fellow class members).

Second, Plaintiff is not an adequate class representative as he has not paid his maintenance fees in nearly a decade. As such, even if a member of PVCOA had incurred damages based on the allegations of the SAC, Plaintiff has not. Moreover, Plaintiff had all of the information necessary to bring this purported class action in 2014, 2015, or certainly by 2016, but Plaintiff lacked diligence in filing this action. Such dilatory efforts demonstrate that neither Plaintiff nor his counsel meet the adequacy requirements of Rule 23.

Third, Plaintiff's counsel is not adequate to represent the purported class. Initially, Plaintiff's counsel has made allegations to allegedly support Plaintiff's claims in the SAC based on essentially identical facts to those alleged in the 2015 Action. Yet, counsel waited until just prior to its own (inaccurate) deadline to file this action in the hope of avoiding dismissal under the statute of limitations. Such a lack of diligence demonstrates that counsel cannot adequately represent a class against these Defendants. Moreover, the SAC (and the three prior versions of the instant complaint) establish that Plaintiff's counsel is not adequate to represent the purported class as the claims have been rife with misstatements, misnamed parties, and have required amendment numerous times even prior to a single motion to dismiss being filed by a Defendant.

Finally, as noted above, Plaintiff's alleged claims – even if otherwise properly stated and able to be pursued directly, which they are not – lack commonality with other members of the putative class as there are questions of law or fact which are not common to the class and, moreover, individual issues will predominate. This includes, questions regarding ownership, financial obligations, membership and history. For all of these reasons, and for other reasons that discovery will uncover Defendants deny that class adjudication is proper in this case.

XVI. COMPLEX CASE

Plaintiff believes that the nature of the case itself, the number of Defendants currently involved, and the complexity of the corporate structures and the interrelationships between those entities alleged makes this case an appropriate candidate for placement on the complex track.

Defendants agree that this is alleged to be a complex case. However, Defendants believe that this entire action must be dismissed with prejudice based on the legal grounds stated in their respective Motions to Dismiss.

XVII. OTHER MATTERS

None known to Plaintiff at this time.

None known to Defendant at this time.

RESPECTFULLY SUBMITTED this 4th day of May, 2021.

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